

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROBERT MORALES, ANGELA K. MORALES,
BRANDON R. MORALES, MARY ANN MORALES,
and TATE W. MORALES,

Plaintiffs,

vs.

No. CIV-04-0558 JB/WDS

E.D. ETNYRE & CO., ROAD MACHINERY
COMPANY, INC., and JOHN DOES 1-10,

Defendants.

MEMORANDUM OPINION AND ORDER

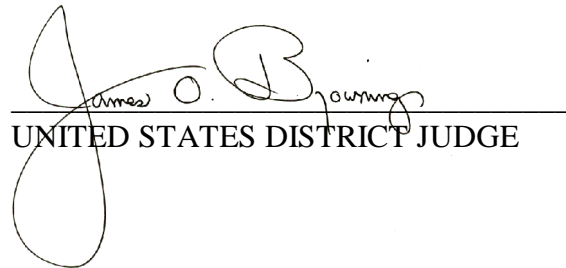
THIS MATTER comes before the Court on the Defendants' Motion in Limine to Exclude Any Testimony Regarding Similar Accidents with Incorporated Points and Authorities, filed January 21, 2005 (Doc. 61). The Court held a hearing on this motion on February 18, 2005. The primary issue is whether the Court should preclude the Plaintiffs from mentioning, arguing, or introducing the evidence regarding allegedly similar accidents or incidents unless and/or until a proper evidentiary foundation has been laid.

Morales was injured when hot asphalt bubbled out of a black top he was operating. Pursuant to rules 401, 402, 403, 702 and 703 of the Federal Rules of Evidence, Defendants E.D. Etnyre & Co. and Road Machinery Company, Inc. move the Court for an order precluding the Plaintiffs from mentioning similar incidents. Follow-up discovery on similar incidents has not established other incidents. See Transcript of Hearing at 99:15 - 100:2.¹

¹ The Court's citations to the transcript of the hearing refer to the Court Reporter's original, unedited version. Any finalized transcript may contain slightly different page and/or line numbers.

At the hearing on this motion, the Plaintiffs' counsel represented that he did not intend to introduce evidence of similar instances where a person was burned using a similar machine, but that he did intend to introduce evidence of instances in Hobbs when the contents of this black topper spilled out or bubbled over. See Transcript at 98:17 - 100:22. Based on this representation, the Court will grant the Defendants' Motion in Limine in part and deny the motion in part.

IT IS ORDERED that the Defendants' Motion in Limine to Exclude Any Testimony Regarding Similar Accidents with Incorporated Points and Authorities is granted in part and denied in part. The Plaintiffs may mention, argue or introduce evidence of instances when this black topper spilled or bubbled over in Hobbs. The Plaintiffs may not mention, argue or introduce evidence of similar instances where a person was burned using a similar machine unless and/or until a proper evidentiary foundation has been laid.



UNITED STATES DISTRICT JUDGE

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